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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARLON ROMERO, individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

ROCKET MORTGAGE, LLC;
DOES 1-10 Inclusive,

Defendant.

Case No.: 5:22-cv-1323

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. §
227, ET SEQ.**

JURY TRIAL DEMANDED

INTRODUCTION

1. MARLON ROMERO (“Plaintiff”), brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of ROCKET MORTGAGE, LLC (“Defendant”), in negligently contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, (“TCPA”) and related regulations. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other

1 matters, upon information and belief, including investigation conducted by his
2 attorneys.

3 2. The TCPA was designed to prevent calls and messages like the ones
4 described within this complaint, and to protect the privacy of citizens like Plaintiff.
5 “Voluminous consumer complaints about abuses of telephone technology – for
6 example, computerized calls dispatched to private homes – prompted Congress to
7 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

8 3. In enacting the TCPA, Congress intended to give consumers a choice
9 as to how creditors and telemarketers may call them, and made specific findings
10 that “[t]echnologies that might allow consumers to avoid receiving such calls and
11 messages are not universally available, are costly, are unlikely to be enforced, or
12 place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11.
13 Toward this end, Congress found that

14
15 [b]anning such automated or prerecorded telephone calls to the home,
16 except when the receiving party consents to receiving the call or when
17 such calls are necessary in an emergency situation affecting the health
18 and safety of the consumer, is the only effective means of protecting
telephone consumers from this nuisance and privacy invasion.

19 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
20 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s
21 purpose).

22 4. Congress also specifically found that “the evidence presented to the
23 Congress indicates that automated or prerecorded calls are a nuisance and an
24 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See also,
25 *Mims*, 132 S. Ct. at 744.

26 5. In a recent decision, the Supreme Court interpreted the term
27 “automatic telephone dialing system” and held that “[t]o qualify as an ‘automatic
28 telephone dialing system,’ a device must have the capacity either to store a

1 telephone number using a random or sequential generator *or* to produce a telephone
2 number using a random or sequential number generator.” *Facebook, Inc. v. Duguid*,
3 141 S.Ct. 1163 (2021) (emphasis added).

4 6. In *Duguid*, the Supreme Court provided an example of such systems,
5 stating: “For instance, an autodialer might use a random number generator to
6 determine the order in which to pick phone numbers from a preproduced list. It
7 would then store those numbers to be dialed at a later time.” *Id.* at 1171-72 fn. 7.

8 7. Further, both *Duguid* and the legislative history of the TCPA are clear
9 that the original focus on prerecorded voice technology prohibition was the fact
10 that such communications involved agentless calls, not on the question of whether
11 a literal voice was used during those agentless calls. *See* Hearing Before the
12 Subcommittee on Communications of the Committee on Commerce, Science and
13 Transportation, United States Senate One Hundred Second Congress First Session
14 July 24, 1992, Testimony of Robert Bulmash and Steve Hamm at pg 11; 7 FCC
15 Rcd. 8752 (F.C.C. September 17, 1992).

16 8. The Sixth Circuit has also recognized this distinction: “Congress drew
17 an explicit distinction between ‘automated telephone calls that deliver an artificial
18 or prerecorded voice message’ on the one hand and ‘calls place by ‘live’ persons’
19 on the other.” *Ashland Hosp. Corp. v. Serv. Employees Int’l Union, Dist. 1199*
20 *WV/KY/OH*, 708 F.3d 737,743 (6th Cir. 2013).

21 9. Similarly, the FTC has observed that “prerecorded calls are by their
22 very nature one-sided conversations, and if there is no opportunity for consumers
23 to ask questions, offers may not be sufficiently clear for consumers to make
24 informed choices before pressing a button or saying yes to make a purchase.” 73
25 FR 51164-01, 51167 (Aug. 29, 2008).

26 27 JURISDICTION AND VENUE

28 10. Jurisdiction is proper under 28 U.S.C. § 1331 because this action

1 arises under a federal statute, namely the Telephone Consumer Protection Act, 47
2 U.S.C. § 227, *et seq.*

3 11. Venue is proper in the United States District Court for the Central
4 District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because
5 Defendant does business within the state of California and Plaintiff resides within
6 this district.

7 **PARTIES**

8 12. Plaintiff is, and at all times mentioned herein, was a citizen and
9 resident of the State of California. Plaintiff is, and at all times mentioned herein
10 was, a “person” as defined by 47 U.S.C. § 153 (39). Plaintiff was physically in
11 California at the time he received the alleged text messages from Defendant.

12 13. Plaintiff is informed and believes, and thereon alleges, that Defendant
13 is a mortgage loan provider incorporated in the state of Michigan. Defendant, and
14 all of its agents, are and at all times mentioned herein were “persons,” as defined
15 by 47 U.S.C. § 153 (39). Plaintiff alleges that at all times relevant herein Defendant
16 conducted business in the State of California and in the County of Riverside, and
17 within this judicial district.

18 **FACTUAL ALLEGATIONS**

19 14. At all times relevant, Plaintiff was a citizen of Riverside County, and
20 a citizen of the State of California. Plaintiff is, and at all times mentioned herein
21 was a “person” as defined by 47 U.S.C. § 153 (39).

22 15. Defendant is, and at all times mentioned herein was, a “person,” as
23 defined by 47 U.S.C. § 153 (39).

24 16. At all times relevant Defendant conducted business in the State of
25 California and in the County of Riverside, within this judicial district.

26 17. On or about July 11, 2022, Plaintiff received a text message from
27 Defendant on his cellular telephone number ending in -3890.

28 18. Specifically, the text message read:

1 Hello! This is Eric Decuyper, from Rocket Mortgage. As
2 the #1 lender in America, we are running a special for the
3 lowest rate and fee combination the market has to offer.
4 When do you have 5 minutes to chat?

5 19. Defendant did not have Plaintiff's prior express consent to contact him
6 on his cellular phone.

7 20. Based on the content and format of these text messages, Plaintiff
8 alleges that they were sent via Defendant's SMS Blasting Platform, i.e., an
9 "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C. § 227
10 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

11 21. The text message sent to Plaintiff's cellular telephone was not sent by
12 a live agent and thus created a one-sided conversation in which Plaintiff could not
13 receive a response to his questions and/or concerns. The text message also was sent
14 in an automated fashion as a result of computerized campaigns that were pre-
15 programmed in advance to send messages out to large groups of consumers all at
16 once, either sequentially or via algorithmic dialing, i.e. in an automated fashion by
17 a computer.

18 22. In Merriam Webster's Dictionary, "voice" is defined as "an
19 instrument or medium of expression." It defines "artificial" as "humanly
20 contrived...often on a natural model : MAN-MADE" and "lacking in natural or
21 spontaneous quality."

22 23. The messages sent to Plaintiff by Defendant using the SMS blasting
23 platform employed a text message as an instrument or medium of expression to
24 deliver an automatic message drafted in advance of being sent, i.e. that of an SMS
25 message, to convey a telemarketing communication to Plaintiff. SMS blasting
26 platforms are man-made humanly contrived programs which allow companies to
27 blast out such messages via non-spontaneous methods, i.e. automated methods
28

1 similar to that of an assembly line in a factory. Such SMS blasting devices are
2 incapable of spontaneity, as they must be programmed by the operator to
3 automatically send messages out, *en masse*, pursuant to preprogrammed
4 parameters.

5 24. Accordingly, Defendant's messages utilized an "artificial voice" as
6 prohibited by 47 U.S.C. § 227(b)(1)(A).

7 25. In Merriam Webster's Dictionary, "prerecorded" is defined as
8 "recorded in advance." "Recorded" is defined as "to set down in writing." The
9 text message sent to Plaintiff's cellular telephone via an SMS blasting platform was
10 set down in writing in advance by Defendant, whose employees wrote out the
11 standard automated messages that were to be sent to Plaintiff and other class
12 members, and by way of preprogrammed SMS blasting, entered the prerecorded
13 message into the SMS Blasting platform, and thereafter sent these messages
14 pursuant to scheduled blasts that were programmed by Defendant. Thus, Defendant
15 employed a text message as an instrument or medium of expression to deliver a
16 prerecorded message drafted in advance of being sent.
17

18 26. Thus, Defendant's messages utilized a "prerecorded voice" as
19 prohibited by 47 U.S.C. § 227(b)(1)(A).

20 27. Additionally, Defendant placed numerous telephone calls to Plaintiffs
21 cellular phone using an ATDS as defined by 47 U.S.C. § 227(a)(1), including but
22 not limited to phone calls placed on December 9, 2021, and December 10, 2021.

23 28. The telephone number that Defendant, or their agent texted and called
24 was assigned to a cellular telephone service for which Plaintiff incurs charges for
25 incoming texts and calls pursuant to 47 U.S.C. § 227 (b)(1).

26 29. These calls and text messages constituted calls that were not for
27 emergency purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).
28

1 30. Plaintiff was never a customer of Defendant and never provided his
2 cellular telephone number to Defendant for any reason whatsoever. Accordingly,
3 Defendant and their agents never received Plaintiff's prior express consent to
4 receive unsolicited calls and text messages, pursuant to 47 U.S.C. § 227 (b)(1)(A).

5 31. Such calls and text messages constitute solicitation calls pursuant to
6 47 C.F.R. § 64.1200(c)(2) as they were attempts to promote or sell Defendant's
7 services.

8 32. These calls and text messages by Defendant, or its agents, violated 47
9 U.S.C. § 227(b)(1).

10 33. Plaintiff is not a customer of Defendant's services and has never
11 provided any personal information, including his cellular telephone numbers, to
12 Defendant for any purpose whatsoever. In addition, Plaintiff told Defendant at
13 least once to stop contacting them and Plaintiff has been registered on the Do-
14 Not-Call Registry for at least thirty (30) days prior to Defendant contacting him.
15 Accordingly, Defendant never received Plaintiff "prior express consent" to
16 receive calls using an automatic telephone dialing system or an artificial or
17 prerecorded voice on their cellular telephone pursuant to 47 U.S.C. §
18 227(b)(1)(A).

19 **CLASS ACTION ALLEGATIONS**

20 34. Plaintiff brings this action on behalf of himself and on behalf of and
21 all others similarly situated, as a member of the two proposed Classes (together,
22 "the Classes").

23 35. Plaintiff represents, and is a member of, the ATDS Class, defined as
24 follows: all persons within the United States who received any unsolicited calls or
25 text messages sent using an ATDS or an artificial or prerecorded voice from
26 Defendant, which text message was not made for emergency purposes or with the
27 recipient's prior express consent within the four years prior to the filing of the
28 Complaint through the date of class certification.

1 36. Plaintiff also represents, and is a member of, the DNC Class, defined
2 as follows: all persons within the United States registered on the National Do-Not-
3 Call Registry for at least 30 days, who had not granted Defendant prior express
4 consent not had a prior established business relationship, who received more than
5 one phone call or text message from or on behalf of Defendant that promoted
6 Defendant's products or services, within any twelve-month period, within four
7 years prior to the filing of the Complaint through the date of class certification.

8 37. Defendant and its employees or agents are excluded from the Classes.
9 Plaintiff does not know the number of members in the Classes, but believes the
10 Classes' members number in the thousands, if not more. Thus, this matter should
11 be certified as a Class action to assist in the expeditious litigation of this matter.

12 38. This suit seeks only damages and injunctive relief for recovery of
13 economic injury on behalf of the Classes, and it expressly is not intended to request
14 any recovery for personal injury and claims related thereto. Plaintiff reserves the
15 right to expand the Class definition to seek recovery on behalf of additional persons
16 as warranted as facts are learned in further investigation and discovery.

17 39. The joinder of the members of the Classes is impractical and the
18 disposition of their claims in the Class action will provide substantial benefits both
19 to the parties and to the court. The Classes can be identified through Defendant's
20 records or Defendant's agents' records.

21 40. Plaintiff and members of the ATDS Class were harmed by the acts of
22 Defendant in at least the following ways: Defendant, either directly or through their
23 agents, illegally contacted Plaintiff and the Class members via their cellular
24 telephones by using marketing calls and text messages, thereby causing Plaintiff
25 and the Class members to incur certain cellular telephone charges or reduce cellular
26 telephone time for which Plaintiff and the Class members previously paid, and
27 invading the privacy of said Plaintiff and the Class members. Plaintiff and the
28 Class members were damaged thereby.

1 41. There is a well-defined community of interest in the questions of law
2 and fact involved affecting the ATDS Class members. The questions of law and
3 fact common to the ATDS Class predominate over questions which may affect
4 individual Class members, including the following:

- 5
- 6 a) Whether, within the four years prior to the filing of this Complaint
7 through the date of class certification, Defendant or their agents made
8 any calls or text messages (other than those made for emergency
9 purposes or made with the prior express consent of the called party)
10 to an ATDS Class member using any automatic dialing system or
11 artificial or prerecorded voice to any telephone number assigned to a
12 cellular phone service;
13 b) Whether Plaintiff and the ATDS Class members were damaged
14 thereby, and the extent of damages for such violation; and
15 c) Whether Defendant and their agents should be enjoined from
16 engaging in such conduct in the future.

17 42. As a person that received at least one solicitation call and text message
18 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
19 typical of the ATDS Class. Plaintiff will fairly and adequately represent and protect
20 the interests of the ATDS Class in that Plaintiff has no interests antagonistic to any
21 member of the ATDS Class.

22 43. Plaintiff and members of the DNC Class were harmed by the acts of
23 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
24 and the DNC Class members via their cellular telephones for solicitation purposes,
25 thereby invading the privacy of Plaintiff and the DNC Class members whose
26 telephone numbers were on the National Do-Not-Call Registry. Plaintiff and the
27 DNC Class members were damaged thereby.

28 44. There is a well-defined community of interest in the questions of law
and fact involved affecting the DNC Class members. The questions of law and fact
common to the DNC Class predominate over questions which may affect individual
DNC Class members, including the following:

- a. Whether, within four years prior to the filing of the complaint through the date of class certification, Defendant or its agents made more than one solicitation call to the members of the DNC Class whose telephone numbers were on the National Do-Not-Call Registry for over thirty days and who had not granted prior express consent to Defendant and did not have an established business relationship with Defendant;
- b. Whether Defendant obtained prior express written consent to place solicitation calls to Plaintiff's or the DNC Class members' telephones;
- c. Whether Plaintiff and the DNC Class members were damaged by Defendant's conduct, and the extent of damages for such violation; and
- d. Whether Defendant and its agents should be enjoined from engaging in such conduct in the future.

45. As a person whose phone number was registered on the National Do-Not-Call Registry for at least thirty days, did not give Defendant express prior consent and did not have a prior business relationship with Defendant, but received more than one call or text message on behalf of Defendant during the applicable period, Plaintiff is asserting claims that are typical of the DNC Class. Plaintiff will fairly and adequately represent and protect the interests of the DNC Class in that Plaintiff has no interests antagonistic to any member of the DNC Class.

46. Plaintiff and the members of the Classes have suffered irreparable harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class action, the Classes will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendant will likely continue such illegal conduct. Because of the size of the individual member's claims, few, if any, members of the Classes could afford to seek legal redress for the wrongs complained of herein.

47. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the Telephone Consumer Protection Act.

48. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce

1 Defendant to comply with federal and California law. The interest of the Classes'
 2 members in individually controlling the prosecution of separate claims against
 3 Defendant are small because the maximum statutory damages in an individual
 4 action for violation of privacy are minimal. Management of these claims is likely
 5 to present significantly fewer difficulties than those presented in many class claims.

6 49. Defendant has acted on grounds generally applicable to the Classes,
 7 thereby making appropriate final injunctive relief and corresponding declaratory
 8 relief with respect to the Classes as a whole.

9
 10 **FIRST CAUSE OF ACTION**
 11 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
 12 **47 U.S.C. § 227(B)**
 13 **ON BEHALF OF THE ATDS CLASS**

14 50. Plaintiff incorporates by reference all of the above paragraphs of this
 15 Complaint as though fully stated herein.

16 51. The foregoing acts and omissions of Defendant constitute numerous
 17 and multiple negligent violations of the TCPA, including but not limited to each
 18 and every one of the above-cited provisions of 47 U.S.C. § 227(b).

19 52. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b),
 20 Plaintiff and ATDS Class members are entitled to an award of \$500.00 in statutory
 21 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

22 53. Plaintiff and ATDS Class members are also entitled to and seek
 23 injunctive relief prohibiting such conduct in the future.

24 **SECOND CAUSE OF ACTION**
 25 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
 26 **TELEPHONE CONSUMER PROTECTION ACT**
 27 **47 U.S.C. § 227(B)**
 28 **ON BEHALF OF THE ATDS CLASS**

54. Plaintiff incorporates by reference all of the above paragraphs of this
 Complaint as though fully stated herein.

1 55. The foregoing acts and omissions of Defendant constitute numerous
 2 and multiple knowing and/or willful violations of the TCPA, including but not
 3 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227(b).

4 56. As a result of Defendant's knowing and/or willful violations of 47
 5 U.S.C. § 227(b), Plaintiff and ATDS Class members are entitled to an award of
 6 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
 7 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

8 57. Plaintiff and ATDS Class members are also entitled to and seek
 9 injunctive relief prohibiting such conduct in the future.

10
 11 **THIRD CAUSE OF ACTION**
 12 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
 13 **47 U.S.C. § 227(c)**
 14 **ON BEHALF OF THE DNC CLASS**

15 59. Plaintiff incorporates by reference all of the above paragraphs of this
 16 Complaint as though fully stated herein.

17 60. The foregoing acts and omissions of Defendant constitute numerous
 18 and multiple negligent violations of the TCPA, including but not limited to each
 19 and every one of the above cited provisions of 47 U.S.C. § 227(c), and in particular
 20 47 U.S.C. § 227(c)(5).

21 61. As a result of Defendant's negligent violations of 47 U.S.C. § 227(c),
 22 Plaintiff and the DNC Class members are entitled to an award of \$500.00 in
 23 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
 24 227(c)(5)(B).

25 62. Plaintiff and the DNC Class members are also entitled to and seek
 26 injunctive relief prohibiting such conduct in the future.
 27
 28

FOURTH CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT
47 U.S.C. § 227(c)
ON BEHALF OF THE DNC CLASS

63. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

64. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(c), and in particular 47 U.S.C. § 227(c)(5).

65. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class members are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff, and members of the Classes, the following relief against Defendant:

FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227(B)

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each ATDS Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

- Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION OF
THE TCPA, 47 U.S.C. § 227(B)**

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each ATDS Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**THIRD CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227(C)**

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(c)(5), Plaintiff seeks for himself and each DNC Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).
- Pursuant to 47 U.S.C. § 227(c)(5)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**FOURTH CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION OF
THE TCPA, 47 U.S.C. § 227(C)**

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(c)(5), Plaintiff seeks for himself and each DNC Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).
- Pursuant to 47 U.S.C. § 227(c)(5)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

66. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: July 28, 2022

Respectfully submitted,

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By: s/ Todd M. Friedman
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